

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLINE D. PATTERSON and DEPARTMENT OF VETERANS
AFFAIRS, REGIONAL OFFICE, Muskogee, Okla.

*Docket No. 96-1779; Submitted on the Record;
Issued August 20, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a) of the Federal Employees' Compensation Act, on the basis that her request for reconsideration was not timely filed within the one-year time limitation period set forth in 20 C.F.R. § 10.138(b)(2) and did not show clear evidence of error, constituted an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed her appeal with the Board on May 16, 1996 the only decisions properly before the Board are the Office's February 15, 1996 and September 7, 1995 decisions denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's last merit decision dated March 3, 1994 in which the Office terminated appellant's compensation benefits.²

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office, in its February 15, 1996 and September 7, 1995 decisions, to reopen appellant's case for further merit review, did not constitute an abuse of discretion.³

Section 8128(a) of the Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.⁴ The Office, through regulations,

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

² *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

³ The Board notes that appellant submitted new evidence in her appeal to the Board. This evidence was not before the Office at the time it issued its February 15, 1996 and September 7, 1995 decisions and therefore the Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

⁴ 5 U.S.C. § 8128(a); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

has imposed a one-year time limitation for a request of review with additional evidence to be made following a merit decision of the Office.⁵ When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.⁶

On September 24, 1990 appellant, then a 44-year-old secretary, sustained a lumbar strain in the performance of duty.

The last merit decision issued in this case was dated March 3, 1994. In that decision, an Office hearing representative affirmed the Office's April 5, 1993 decision terminating appellant's compensation benefits on the grounds that her disability causally related to her September 24, 1990 employment injury had ceased. In the April 5, 1993 decision, the Office also denied appellant's request for reimbursement for a hot tub.

By letter dated July 6, 1994, appellant requested reconsideration of the Office's March 3, 1994 decision.

By decision dated August 25, 1994, the Office denied appellant's request for further merit review of her case.

By letter dated March 9, 1995, appellant requested reconsideration and submitted additional evidence.

By decision dated April 17, 1995, the Office denied appellant's reconsideration request on the grounds that it was not timely filed within one year of the Office's March 3, 1994 decision and on the grounds that it failed to present clear evidence of error.

In a letter postmarked August 31, 1995 and received by the Office on September 6, 1995, appellant requested reconsideration and submitted additional evidence.

In notes dated June 1, 1995, Dr. Douglas W. Parker, Jr., a physician whose specialty is not indicated in the record, related that appellant was complaining of severe pain in the back and left leg which she attributed to her September 24, 1990 employment injury. He noted that a lumbar magnetic resonance imaging (MRI) scan taken on May 18, 1995 showed degenerative disc disease. Dr. Parker provided findings on examination but did not indicate that appellant was disabled or that her condition was causally related to the 1990 employment injury.

By decision dated September 7, 1995, the Office denied appellant's request for further merit review on the grounds that her request was untimely filed and failed to present clear evidence of error.

By letter dated December 28, 1995, appellant requested reconsideration. She submitted no new evidence.

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, *supra* note 4.

By decision dated February 15, 1996, the Office denied appellant's reconsideration request on the grounds that it was untimely filed and failed to present clear evidence of error.

The only evidence submitted by appellant in support of her untimely requests for reconsideration were the notes dated June 1, 1995 from Dr. Parker, as noted above. The issue in this case is whether appellant had any continuing disability or medical condition causally related to her September 24, 1990 employment injury. Dr. Parker discussed appellant's belief that her condition was related to the 1990 employment injury but did not provide any rationalized medical opinion which addressed how appellant's medical condition was causally related to her 1990 employment injury or whether she had any disability related to the 1990 employment injury. Therefore the report of Dr. Parker is not sufficient to show clear evidence of error in the Office's March 3, 1994 merit decision terminating appellant's compensation benefits.

The February 15, 1996 and September 7, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 20, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member